Illinois, 248. Two propositions are relied upon for reversal: first, a refusal to instruct a verdict on the ground that there was no evidence tending to show either negligence or that the company or the deceased at the time of the particular transaction from which the injury arose was engaged in interstate commerce, and second, a further refusal to instruct that a state statute limiting the amount of recovery was controlling although the suit was under the act of Congress. These contentions are Federal (*Seaboard Air Line* v. *Padgett*, 236 U. S. 668, 673; *Central Vermont Ry.* v. *White*, 238 U. S. 507, 509) and there is jurisdiction, as we do not find them wholly frivolous.

Overruling the motion to dismiss, we come to consider whether we should grant the motion to affirm, and for that purpose we must decide whether the propositions are so wanting in substance as not to require further argument. Rule 6, paragraph 5. We are of the opinion that as to both propositions an affirmative answer is required. We say this because as to the first it is apparent that there is no ground upon which to rest the assertion that there was no tendency of proof whatever on the subjects stated, but to the contrary the record makes it clear, and the arguments in support of the proposition demonstrate, that it alone involves a mere dispute concerning the weight of conflicting tendencies of proof. And the same conclusion is necessary as to the second, because in substance and effect the want of merit in that proposition has by necessary intendment been so conclusively established by the previous decisions of this court concerning the exclusive operation and effect of the Employers' Liability Act over the subject with which it deals as to exclude all ground for the contention which the proposition makes. *Second Employers' Liability Cases*, 223 U. S. 1, 53–55; *Mich. Cent. R. R.* v. *Vreeland*, 227 U. S. 59, 66–67; *St. Louis, Iron Mtn. & So. Ry.* v. *Craft*, 237 U. S. 648, 655.

Affirmed.